

Issue Paper Number 00-043



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and
Administrative Efficiency
Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

PROPERTY OF THE ASSESSEE PROPERTY TAX RULE 305.3

I. Issue

How should Property Tax Rule 305.3 define the phrase "property of the assessee" as used in the equalization provisions of Revenue and Taxation Code section 469?

II. Staff Recommendation

Staff recommends that Property Tax Rule 305.3 clarify that the phrase "property of the assessee" be defined to mean property for which the audited taxpayer is assessed.

III. Other Alternative(s) Considered

The language should be defined to mean any property for which the audited taxpayer is assessed and other property for which the taxpayer has a direct economic interest in the payment of the property taxes. (California Taxpayers' Association)

Issue Paper Number 00-043

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. Pursuant to that authority, the Board directed staff to draft a new section 305.3 of Title 18 of the California Code of Regulations, Subchapter 3, Local Equalization Property Tax Rules, to interpret provisions of Revenue and Taxation Code section 469 relating to assessment appeal rights and appeals boards' jurisdiction to equalize escape assessments resulting from audits performed pursuant to that section.

Revenue and Taxation Code section 469 requires that a county assessor audit at least once each four years the assessable trade fixtures and business tangible personal property with a full value of \$400,000 or more owned, claimed, possessed or controlled by a taxpayer engaged in a profession, trade, or business. Section 469 further provides in the fourth paragraph:

If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question.

The paragraph was added by 1978 legislation amending section 469. Prior to the amendment, a taxpayer could only appeal escape assessments following an audit. In a letter to Governor Edmund G. Brown, Jr., dated August 31, 1978, the sponsors of the amendment (the Taxation Section of the California State Bar) expressed the intent of the legislation as follows:

The bill would allow a business taxpayer of property tax to have his entire assessment for a particular year at a business premises to be reviewed and equalized when the assessor by reason of an audit proposes an escape assessment. The bill is needed because many taxpayers do not protest assessments when the overall assessment at a business premises seems fair, even though some components are over-assessed and some under-assessed. Then, years later the assessor by reason of audit, proposes an escape assessment for the under-assessed component. Under the present law, the taxpayer has no redress for the over-assessed component at the late date of the proposed escape assessment.

Thus, the amendment was intended to address situations where:

- A taxpayer was satisfied with an overall property assessment, even while recognizing that he/she was not in agreement with the assessor's allocation to various parts of the overall assessment.
- Subsequently, the assessor conducted an audit that resulted in an escape assessment, thereby increasing the overall assessment for the property for a particular year.
- Following the audit, the taxpayer could only challenge the escape assessment even though the taxpayer had previously recognized that the assessment allocations were incorrect.

A difference of opinion over the application of the foregoing provision has led to the proposal for a new Property Tax Rule to interpret and to make specific its language. Property Taxes Department staff and

FORMAL ISSUE PAPER

Legal Division staff drafted proposed Property Tax Rule 305.3 after receiving input from the California Association of Clerks and Election Officials, California Assessors' Association, County Counsels' Association of California, California Taxpayers' Association, and industry representatives.

On February 25, 2000, staff held a meeting in Sacramento with interested parties for discussions in an effort to reach agreement on as many issues as possible. Staff and interested parties were unable to reach agreement on several key issues and, therefore, it was decided that the rule writing process would be accomplished in two stages.

First, each unresolved issue and the parties' positions on each issue would be presented to the Property Tax Committee for decision. Second, the rule would be redrafted in accordance with the Board's positions on the issues, and then resubmitted to interested parties for review and comment. The redrafted Property Tax Rule would then be presented to the Property Tax Committee for approval of the language.

At the Property Tax Committee meeting on April 5, 2000, the Board was asked to decide five major unresolved issues. However, at the request of some interested parties, the Members decided at the April 5 meeting to delay the rulemaking process until November 1, 2000 because the case of *Heavenly Valley v. El Dorado County Board of Equalization* was pending before the court of appeal. At issue in the case is the proper interpretation of some aspects of the equalization provisions of Revenue and Taxation Code section 469. The oral arguments in the *Heavenly Valley* case are now set for hearing on November 13, 2000.

As instructed at the April 5 Property Tax Committee meeting, staff now requests direction on five major issues surrounding the equalization provisions of section 469 of the Revenue and Taxation Code which will be presented in this issue paper and four other issue papers.

V. Staff Recommendation

Property Tax Rule 305.3 should define the phrase "property of the assessee" as only that property for which the audited taxpayer is assessed.

A. Description of the Staff Recommendation

The fourth paragraph of section 469 provides in relevant part:

If the result of an audit for any year discloses property subject to escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board . . .

Staff recommends that the phrase "property of the assessee" be defined to mean property for which the audited taxpayer is assessed. Staff's recommendation is based on the plain language meaning of "assessee". Revenue and Taxation Code section 23 defines an "assessee" as "the person to whom the property or a tax is assessed."

The equalization provisions of section 469 afford an audited taxpayer the opportunity to appeal the original assessment of his or her property not subject to escape assessment to ensure that the assessed value of the entire property is correctly allocated and equalized. The definition of "assessee" should not be expanded beyond its plain language meaning to allow the audited taxpayer to seek equalization of property not assessed to him or her and, thus, not part of the original assessment.

B. Pros of the Staff Recommendation

The definition conforms to the plain language of section 469 and statutory definition of "assessee". Defining the term "assessee" in a manner consistent with existing law ensures that the purpose of the original legislation is fulfilled, yet not expanded. The original legislation that added the equalization provisions to section 469 was intended to provide the taxpayer and local assessment appeals board with a mechanism to ensure that all of the property in the audited taxpayer's original assessment could be equalized following the discovery of an escape assessment.

- Property in the taxpayer's original assessment is that property assessed to the taxpayer, i.e., the taxpayer is the assessee.
- Property in the taxpayer's original assessment does not include property leased by the audited taxpayer and assessed to a third party.
- If the Legislature wished to allow audited taxpayers to seek equalization of property assessed to third parties, then the Legislature could have expressly so provided by using a term such as "property of the assessee and property leased by the assessee" in section 469.

Instead, by using the phrase "property of the assessee," the Legislature is presumed to have intended the specific definition of Revenue and Taxation Code section 23.

C. Cons of the Staff Recommendation

Restricting the definition to property for which the audited taxpayer is assessed is inconsistent with the provisions governing application filing requirements of the Revenue and Taxation Code and Property Tax Rules. Section 1603, subdivision (a) of the Revenue and Taxation Code provides that a "person affected" is eligible to file an application appealing the assessment of property. Rule 301, subdivision (g) defines a "person affected" as "any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date". Thus, any person who has a direct economic interest in the payment of taxes on a property may appeal an assessment of that property.

D. Statutory or Regulatory Change

Action by the Board to adopt a Property Tax Rule interpreting the equalization provisions of section 469 will add section 305.3 to Title 18 of the California Code of Regulations, Subchapter 3.

E. Administrative Impact

None

F. Fiscal Impact

1. Cost Impact

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

Adoption of a Property Tax Rule interpreting the equalization provisions of section 469 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each

taxpayer seeking a reduction in assessment of his or her property's value following an audit conducted pursuant to section 469.

H. Critical Time Frames

There is no critical time frame for adoption of a Property Tax Rule interpreting section 469 since a county assessor conducts audits pursuant to section 469 on an ongoing basis. The 60-day period for filing an application appealing the result of an audit disclosing property subject to an escape assessment commences on receipt of the proper notice of the escape assessment. Consequently, the equalization provisions of section 469 provide for the filing of an application for an equalization hearing before a local board of equalization or county assessment appeals board throughout the year.

VI. Alternative 1

A. Description of the Alternative (California Taxpayers' Association proposal)

"Property of the assessee" means property of the person affected. Property Tax Rule 301 provides:

"Person affected" or "party affected" is any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date that is the subject of the proceedings under this subchapter, including the property owner, a lessee required by the property lease to pay the property taxes, and a property owner who acquires an ownership interest after the lien date if the new owner is also responsible for payment of property taxes for the lien date that is the subject of the application.

Defining "property of the assessee" to mean "person affected" would allow the audited taxpayer:

- To seek equalization of property assessed to him or her.
- To seek equalization of property not assessed to him or her, but for which he or she has a direct economic interest in the payment of the property taxes.

B. Pros of the Alternative

This alternative is consistent with the application filing requirement provisions by construing the language to provide that an audited taxpayer has the right to appeal an assessment on any property for which the taxpayer has a direct economic interest in the payment of the property taxes.

C. Cons of the Alternative

This alternative would improperly enlarge the meaning of the plain language of the statute by allowing parties other than the taxpayer to whom the property has been assessed to invoke the equalization provisions of section 469 with respect to that property.

D. Statutory or Regulatory Change

Action by the Board to adopt a Property Tax Rule interpreting the equalization provisions of section 469 will add section 305.3 to Title 18 of the California Code of Regulations, Subchapter 3.

E. Administrative Impact

None

F. Fiscal Impact

1. Cost Impact

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

Adoption of a Property Tax Rule interpreting the equalization provisions of section 469 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value following an audit conducted pursuant to section 469.

H. Critical Time Frames

There is no critical time frame for adoption of a Property Tax Rule interpreting section 469 since a county assessor conducts audits pursuant to section 469 on an ongoing basis. The 60-day period for filing an application appealing the result of an audit disclosing property subject to an escape assessment commences on receipt of the proper notice of the escape assessment. Consequently, the equalization provisions of section 469 provide for the filing of an application for an equalization hearing before a local board of equalization or county assessment appeals board throughout the year.

Prepared by: Property Taxes Department; Policy, Planning, and Standards Division
Legal Division; Property Taxes Section

Current as of: October 12, 2000